

# **EXHIBIT D**

**Declaration of Philip P. Mann**

**Case No. 21-CV-0817-TSZ**

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

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BUNGIE, INC., a Delaware corporation,	)	
	)	
Plaintiff,	)	CASE NO. C21-00881-TSZ
	)	
v.	)	
	)	Seattle, Washington
PHOENIX DIGITAL GROUP LLC, an	)	
Arizona limited liability company;	)	May 21, 2024
JEFFREY CONWAY, an individual;	)	9:30 a.m.
DAVID SCHAEFER, an individual;	)	
JORDAN GREEN, an individual; and	)	JURY TRIAL, DAY 2 of 5
JAMES MAY, an individual,	)	
	)	
Defendants.	)	
	)	

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VERBATIM REPORT OF PROCEEDINGS  
BEFORE THE HONORABLE THOMAS S. ZILLY  
UNITED STATES DISTRICT JUDGE

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APPEARANCES:

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PROCEEDINGS

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THE FOLLOWING PROCEEDINGS WERE HELD  
IN THE PRESENCE OF THE JURY:

THE COURT: Good morning. The court apologizes to the counsel and the parties for starting late this morning. We're hoping it won't happen again.

Call your first witness.

MR. MANN: Your Honor, I have a preliminary matter having to do with Rule 615, in particular.

There are some people sitting here. I recognize some as witnesses. I would like to invoke the rule excluding witnesses and limit Bungie to one party representative.

MR. RAVA: Well...

THE COURT: I have no choice. That's a rule that requires me to grant the motion if it's made, and it's been made, so any witness who is going to testify, other than your party representative, needs to be excluded from the courtroom.

MR. RAVA: Including experts, Your Honor?

MR. MANN: I believe so.

THE COURT: Well, I don't know why it doesn't include experts as well. I'll exclude them.

MR. RAVA: All right.

MR. MANN: Thank you, Your Honor.

MR. RAVA: Plaintiff calls Dr. Ed Kaiser.

1 A. Yes. I'm very happy to say a lot of my code is, yeah, in  
2 the game. It's still part of the engine. We are still building  
3 upon it, but it's foundational.

4 Q. Is part of your code part of what we saw in Exhibits 2 and  
5 4, those copyrights that were submitted? Do you have code that  
6 was part of that?

7 A. Yes. I have a little bit of code that was in those  
8 submissions to the copyright office.

9 Q. You didn't write all of the code for *Destiny*, did you?

10 A. No, certainly not.

11 Q. All right. I believe you mentioned earlier that *Destiny's*  
12 got a massive code base, right?

13 A. Yeah. It's about 25 million lines.

14 Q. Are there a lot of you working on it?

15 A. When I started, there were 30 engineers. Now, I think  
16 there were about 160 engineers. So, yeah, over time we've grown  
17 the engineering team, and there are a lot of good engineers  
18 working on it.

19 Q. That brings us up to your current job, Dr. Kaiser. I think  
20 you said were the engineering lead on the product security team.  
21 Did I get that right?

22 A. That's correct.

23 Q. Tell us what you do in that role, Dr. Kaiser.

24 A. Yeah. In 2021, I was given another great opportunity.  
25 This time the opportunity was return to my roots and get to lead

1 C-Suite, the executives at Bungie.

2 Q. Do you have an understanding, Dr. Kaiser, of whether the  
3 company notified the defendants of the company's concerns at  
4 some point?

5 A. Yes. Almost a year later, after repeated updates to the  
6 game, and then the cheat would have to make subsequent updates  
7 to work again, and repeated reverse engineering hundreds of  
8 times, we notified -- at that point, we had identified the  
9 principals of the company and notified them that we wanted them  
10 to stop, and that -- we really wanted them to stop.

11 Q. This was in November of 2020, to your recollection?

12 A. That is my recollection.

13 Q. All right.

14 Dr. Kaiser, I'm going to turn specifically now to the  
15 AimJunkies' cheat.

16 Did you have a chance to review the AimJunkies' cheat code?

17 A. I have not.

18 Q. Have you had a chance to see the AimJunkies' cheat code  
19 interacting with the Bungie game engine?

20 A. I have not.

21 Q. Have you played with the AimJunkies' cheat code?

22 A. I have not.

23 Q. Do you know, Dr. Kaiser, what the AimJunkies' cheat does?

24 A. Yes. We've seen its promotional materials that's on its  
25 website, and that one time, we did get it to work, and the

1 Q. I could do that, but I'll represent to you -- we'll have a  
2 lunch break shortly, and if I'm wrong, you can let me know. But  
3 I'd like to move on.

4 Now, you mentioned that you purchased a loader. Now, did  
5 that loader enable the mysterious John Doe to access a copy of  
6 the cheat software?

7 A. The loader operates by a command-and-control structure. It  
8 has to, essentially, contact back to the AimJunkies' server to  
9 download the payload, but it does not download it to the file  
10 system, it downloads it to memory and is erased as soon as the  
11 operation is done.

12 MR. MANN: Your Honor, move to strike as  
13 nonresponsive.

14 Q. (By Mr. Mann) My question is, does a loader enable Bungie  
15 to get access to the *Destiny 2* cheat code?

16 A. It does not.

17 Q. Does not?

18 So the fact of the matter is, Bungie never actually had the  
19 *Destiny 2* cheat, correct?

20 A. We had downloaded the software -- the loader -- and ran it  
21 once to demonstrate its capabilities and confirmed its  
22 capabilities, but we had not downloaded the source code, seems  
23 what you're asking.

24 Q. My question is, did you download the source of the -- the  
25 software of the *Destiny 2* cheat, whether it's our source code,

1 whether it's object code, whether it's red, I don't know,  
2 whatever; did you download?

3 A. We did not. We downloaded the loader.

4 Q. So you have not actually looked at the *Destiny 2* cheat  
5 itself; isn't that correct?

6 A. I haven't looked at the source code nor the object code,  
7 that's correct.

8 Q. Okay. I want to break this down a little bit. When you're  
9 referring to "you," I want to pin down the difference between  
10 you and somebody else associated with Bungie.

11 Have you personally ever operated the *Destiny 2* cheat?

12 A. I've not personally operated the *Destiny 2* AimJunkies'  
13 cheat.

14 Q. Have you personally ever seen the *Destiny 2* source code?

15 A. Yes.

16 Q. You have seen -- I'm sorry. I apologize. We got to be  
17 very precise here.

18 Have you personally seen the source code for that *Destiny 2*  
19 cheat distributed by Bungie?

20 And I want to make this very clear. In this lawsuit, we  
21 are talking about alleged cheat software -- well, what is cheat  
22 software? We're not hiding anything. We know what the software  
23 does, but the lawsuit --

24 THE COURT: Just a moment. Ask a question.

25 MR. MANN: Certainly.

1 Q. (By Mr. Mann) I just wanted the clarification here.

2 When I'm talking about the *Destiny 2* cheat software, I'm  
3 referring to the *Destiny 2* cheat software distributed by Phoenix  
4 Digital, not by anyone else. Can we have that understanding?

5 A. We can.

6 Q. Okay. Thank you.

7 A. But you were just describing cheat software distributed by  
8 Bungie, which is --

9 Q. I understand. That was a misstatement on my part. I'm  
10 sorry. So I'll rephrase my question.

11 Have you personally seen the source code for the *Destiny 2*  
12 cheat distributed by Bungie?

13 A. Again, Bungie does not distribute cheats.

14 Q. I'm sorry. Distributed by Phoenix Digital. I apologize.  
15 Let's start over again.

16 Have you personally seen the source code for the *Destiny 2*  
17 cheat distributed by the defendant in this case, Phoenix  
18 Digital?

19 A. I have not seen the source code.

20 Q. Good. Now let's try it again with the object code.

21 Have you personally seen the object code for the *Destiny 2*  
22 cheat distributed by the defendant, Phoenix Digital?

23 A. I have not personally seen the object code.

24 Q. Good. Now let's change it slightly.

25 Has anyone at Bungie personally seen the source code for



1 the *Destiny 2* cheat distributed by the defendant, Phoenix  
2 Digital?

3 A. No, I don't think so.

4 Q. That's a "no"?

5 A. No.

6 Q. Thank you.

7 Again, now, has anyone at Bungie personally seen the object  
8 code for the *Destiny 2* cheat distributed by the defendant,  
9 Phoenix Digital?

10 A. No, I don't believe so.

11 Q. And the fact of the matter is -- well, let me back up a  
12 little bit.

13 As I said, John Doe, based on the information that we  
14 developed in deposition I took, my understanding is John Doe is  
15 the Bungie employee or the Bungie agent that actually went to  
16 the AimJunkies' website and downloaded either the loader or  
17 whatever else for the *Destiny 2* cheat, correct? Do you have any  
18 reason to believe it wasn't John Doe?

19 A. Can you repeat the question? It was a long question.

20 Q. Certainly.

21 John Doe, my understanding is, is the person who went to  
22 the AimJunkies' website -- he's a Bungie person who went to the  
23 AimJunkies' website, and obtained whatever could be obtained  
24 regarding the *Destiny 2* cheat distributed by Phoenix Digital.  
25 Is that your understanding?

1 A. That is my understanding, yes.

2 Q. Okay. We're in agreement it was John Doe; it wasn't anyone  
3 else?

4 A. That's correct.

5 Q. Okay. Do you know who at Bungie -- and I'm not asking for  
6 a name. If this is top secret, you don't have to give me a  
7 name. Do you know who at Bungie actually operated the *Destiny 2*  
8 cheat obtained from the AimJunkies' website operated by Phoenix  
9 Digital?

10 A. Yes. I believe it's that same person.

11 Q. Same person?

12 Do you know if anyone other than Mr. Doe operated the

13 *Destiny 2* cheat software obtained from Phoenix Digital?

14 A. I believe no one else has operated the software,

15 unfortunately.

16 Q. Do you know where that software was operated, physical  
17 location?

18 A. Sorry. By "physical location," you mean, like, where in  
19 the world?

20 Q. No. What I mean is, what I'm really getting at is, I  
21 assuming somebody was sitting down at a computer, got the  
22 *Destiny* cheat, and fired it up. What I'm asking is, do you know  
23 where that computer was located?

24 A. Yes.

25 Q. Where was that?

1 we're looking at.

2 MR. MANN: Okay, maybe it's not a major point. We can  
3 move on.

4 THE COURT: Well, he's got a copy of it. If you wish  
5 to inquire about it, go ahead.

6 MR. MANN: Sure.

7 Q. (By Mr. Mann) If you could turn to paragraph 10 of your  
8 declaration. This will be on page 3, Dr. Kaiser.

9 A. I am flipping there now. I see it.

10 Q. Okay. If you look at the second sentence of paragraph 10,  
11 could you read that for us, please?

12 A. Pardon me? Which sentence do you want me to read?

13 Q. The second sentence that says, "I first learned of the  
14 cheat software."

15 A. "I first learned of the cheat software on October 13th,  
16 2021, as I took over leadership of the product security team and  
17 was debriefed on the status of a number of ongoing  
18 investigations."

19 Q. And if you turn to the last page of the declaration. This  
20 is on page 7. Do you see that?

21 A. I see this.

22 Q. Can you read the sentence beginning, "I declare under  
23 penalty of perjury"?

24 A. "I declare under penalty of perjury, under the laws of the  
25 United States, that the foregoing is true and correct."

1           Okay, very quickly scroll through this, and go down even  
2 farther down and we see a number of pictures there and scroll  
3 all the way to the bottom. There are many, many pictures here  
4 in the registration.

5           Now if we can scroll up to the top.

6       Q.    (By Mr. Mann) What this one says -- let's scroll down a  
7 little more. It says, "author created audiovisual material,  
8 including music and sounds."

9           Would you agree with me, Dr. Kaiser, that this is one of  
10 those copyrighted registrations that covers the visuals of the  
11 *Destiny 2* game?

12       A.    Yes.

13       Q.    Okay. Now, the visuals that this copyright covers are the  
14 ones that we see below it.

15           MR. MANN: And, again, Ms. Nassar, if you can scroll  
16 down a little bit. Let's stop with that one.

17       Q.    (By Mr. Mann) Now, that is an image that appears in the  
18 *Destiny 2* game, correct?

19       A.    Yes.

20       Q.    Okay. Is it your contention -- and by "your," I mean,  
21 Bungie's contention -- that the *Destiny 2* cheat software copies  
22 that image?

23       A.    I don't think the *Destiny 2* cheat software copies this  
24 exact image, no.

25       Q.    Let's go -- we'll scroll down, and I don't want to be here

1 all day, but does it copy that image?

2 A. I don't believe the cheat software copies that image, no.

3 Q. Does it copy any of the images that we see in this  
4 copyright registration?

5 A. I don't know. I don't think so.

6 Q. Okay. I mean -- I think -- I want to get to the point, and  
7 the point I'm trying to make here is: Does the *Destiny 2* cheat  
8 software actually create the images? Does it actually create  
9 what we see here?

10 A. Sorry. Please repeat the question.

11 Q. Sure.

12 Does the *Destiny 2* cheat software that is at issue here  
13 actually copy any of these images?

14 A. I don't know if it explicitly copies any of the images in  
15 this copyright.

16 Q. And for the record, I'd like you to identify, if you can,  
17 any of the images we see here in Exhibit 1 that Bungie contends  
18 were copied by the *Destiny 2* cheat software.

19 A. Sorry. Can you repeat the question?

20 Q. I'll try.

21 I'm asking you to identify which, if any, images that we  
22 see here in Exhibit 1 that Bungie contends was copied by the  
23 *Destiny 2* cheat software that is at issue here.

24 A. I believe these images are an example of the images in the  
25 game. They're provided as a small example. And I don't believe

1 the cheat software itself copies any of these images.

2 Q. You don't believe the cheat software itself copies any of  
3 these images, correct?

4 A. I don't believe the software itself copies any of these  
5 images.

6 Q. Thank you.

7 Now let's go to Exhibit 2.

8 MR. MANN: Again, this is admitted into evidence, Your  
9 Honor, and I believe -- can the jury see this? Thank you.

10 Again, Ms. Nassar, can you scroll -- stop there.

11 Q. (By Mr. Mann) We see the difference here is -- it says,  
12 "author created," where it says "author," and it says, "author  
13 created computer program."

14 So, Dr. Kaiser, will you agree with me that, unlike the  
15 copyright registration that we saw earlier which related to  
16 images, this copyright registration we see here, Exhibit 2, this  
17 one registers a copyright for the computer program itself,  
18 correct?

19 A. Yes.

20 Q. Not the images; the programming?

21 A. Yes.

22 MR. MANN: Now, if you could scroll down again,  
23 Ms. Nassar, don't stop at every page, but just a very quick  
24 overview of what we see here.

25 Okay. This looks like computer code. Would you agree --

1 Q. Wait.

2 A. I don't believe it is not covered by the copyright. So  
3 that it is covered by the copyright.

4 Q. Even though the copyright says materials that existed prior  
5 to 2015 are excluded from this claim?

6 A. Yes.

7 Q. And, again, the fact is, because Bungie, by your own  
8 admission, has never had the source code to the *Destiny 2* game,  
9 it's impossible for you, or anyone acting on behalf of Bungie,  
10 to point to a one-to-one correspondence between the source code  
11 for the *Destiny 2* game and the source code that we see here in  
12 Exhibit 2; is that correct?

13 A. I don't believe that question was formed well. You asked  
14 if Bungie never had the source code for *Destiny 2*, and it's my  
15 contention that Bungie has always had the source code for  
16 *Destiny 2*.

17 Q. I'm terribly sorry. The *Destiny 2* cheat software. Let's  
18 start over again.

19 If I heard your testimony this morning correctly, Bungie  
20 admits it never had the source code for the *Destiny 2* cheat  
21 software, correct?

22 A. That is correct.

23 Q. And if Bungie doesn't have the source code for the *Destiny*  
24 *2* cheat software, it cannot point to where the source code for  
25 the *Destiny 2* cheat source code is substantially similar to what

1 we see here in Exhibit 2.

2 A. I think your statement is correct that we cannot compare  
3 source code against source code if we do not have one of the  
4 source codes.

5 Q. Thank you. And I'm going to ask the same question with  
6 regard to the object code.

7 I believe you testified that Bungie has never had the  
8 object code for the *Destiny 2* cheat software; is that correct?

9 A. In terms of the cheat software, divided into two halves,  
10 the loader and the payload, we've never had the object code and  
11 scrutinized it with the payload, and we had the object code for  
12 the loader but did not have a chance to scrutinize it.

13 Q. Okay. Let's break this down a little bit. With respect to  
14 the *Destiny 2* cheat software distributed by Phoenix Digital --

15 A. Uh-huh.

16 Q. -- you do not have the object code for the game?

17 A. You used the word "game." Repeat the question, please.

18 Q. "Product."

19 Once again, your testimony has been that Bungie does not  
20 have the object code for the *Destiny 2* cheat software that is  
21 the subject of this lawsuit, correct?

22 A. We do not have it currently, no.

23 Q. You don't have the object code?

24 A. We don't have the object code.

25 Q. And, obviously, if you don't have the object code, you



1 cannot point to substantial similarities between the object code  
2 of the cheat software and the *Destiny 2* game, correct?

3 A. I don't believe I could point at exact object code that was  
4 copied without the object code.

5 Q. Can you do that with respect to the loader?

6 A. Our contention is not that the loader has copied any  
7 software; it was the payload.

8 Q. I want to make sure I understood you correctly.

9 It is Bungie's contention that the *Destiny 2* cheat software  
10 loader -- well, actually, that's a bad -- let me rephrase.

11 It is not Bungie's contention that the loader used by  
12 Phoenix Digital Group infringe's Bungie copyrights; is that  
13 correct?

14 A. The loader does not, as far as I know, contain object code  
15 from the game itself. Bungie has never been in the business of  
16 building cheat loaders, cheat injectors.

17 Q. And then the loader used by Phoenix Digital Group -- again,  
18 just to make sure we dot all the i's -- you're not contending  
19 that the source code of the Phoenix Digital loader infringes any  
20 copyright of Bungie, correct?

21 A. I don't believe the source code for the loader infringes.

22 Q. Thank you.

23 Now, Dr. Kaiser, you testified earlier, I believe, that  
24 what we see here in Exhibit 102 -- I'm sorry -- Exhibit 2 is not  
25 the entire source code for the *Destiny 2* game, correct?

1 A. Correct, it is an example.

2 Q. Okay. So the overwhelming majority of the source code for  
3 *Destiny 2*, the game, is not publicly available, correct?

4 A. That is correct.

5 Q. Okay. So would you agree with me that you can't copy  
6 something that you can't see, or that you don't have access to?

7 A. You can't copy something you cannot see? I don't --

8 Q. Let me give you an example, unless you want to finish your  
9 answer. I'm sorry.

10 A. I mean, I think you're comparing apples and oranges. They  
11 definitely have access to and can see the object code. That is  
12 literally what we publish and what players download. And they  
13 have access to that and they can see it. That is the process of  
14 reverse engineering. That is definitively looking at the object  
15 code and trying to get back at that source code.

16 Q. Well, let's use an interesting word scene. Let's draw an  
17 example here.

18 I don't know who the best-selling authors are today, but  
19 let's say there's a best-selling author, and he or she creates a  
20 best-selling book that's selling like hotcakes, making millions  
21 of dollars. Obviously, the author of that book could get a  
22 copyright on that book, correct?

23 MR. RAVA: I object to the relevance of this, Your  
24 Honor.

25 THE COURT: That calls for a legal conclusion.

1 A. Yes. You would need both the *Destiny 2* client's and the  
2 modified version after the cheat is installed.

3 Q. Okay. So going back to my analogy of if I make an  
4 unauthorized copy of a book and I sell it, the legitimate author  
5 of that book can say, Hey, wait a minute, the infringing copy  
6 you sold is one less than I sold, and therefore I don't get that  
7 money.

8 MR. RAVA: Object; calls for a legal conclusion.

9 THE COURT: Sounds like it. I'll sustain.

10 Q. (By Mr. Mann) When somebody signs up for a *Destiny 2*  
11 cheat, don't they still have to make a deal with Bungie in order  
12 to use that cheat?

13 A. Then that person has been induced into violating the  
14 copyright, yes.

15 Q. Sorry. Can I have that answer back, please?

16 THE COURT: Did you say you wanted it read?

17 MR. MANN: I'd like that answer back, please. I  
18 didn't understand it.

19 (The court read back.)

20 THE COURT: You're going to have ask it again. I'm  
21 sorry.

22 Q. (By Mr. Mann) My question is very simple.

23 In order to use the *Destiny 2* cheat, I would, nevertheless,  
24 have to sign up with Bungie for the *Destiny 2* game, correct?

25 A. The cheat software is not enough to stand on its own,

1 A. Not currently.

2 Q. You saw it on the screen, though? Did I actually change  
3 this copyrighted image when I drew that blue square on the  
4 image?

5 A. I don't believe so.

6 Q. Did this make any permanent change to the original  
7 copyrighted image?

8 A. No, I don't believe so, but --

9 Q. Did it make a temporary change to this piece of paper?

10 A. No.

11 Q. This piece of paper remains entirely unchanged, even though  
12 I drew a blue box on it, correct?

13 A. Yes, but blue box was meaningless to us all. There was  
14 nothing relevant in that image you put in the blue box. You're  
15 not moving the blue box; you're not looking at the computer code  
16 that generated that image to draw the blue box.

17 The example doesn't really make sense to me.

18 Q. I don't want to belabor this, but I can put this back up  
19 there, I can draw a blue box, I can move it around.

20 My point is did, I make any permanent change to this piece  
21 of paper?

22 A. You did not make any permanent change to that piece of  
23 paper.

24 Q. Did I infringe your copyright by drawing that blue box on  
25 the image we saw on the screen?

1 MR. RAVA: Object to the extent it calls for a legal  
2 conclusion.

3 THE COURT: Overruled. You may answer.

4 A. I don't know. I don't think so.

5 THE COURT: How much longer with this witness,  
6 counsel?

7 MR. MANN: I probably have, at least, 20 more minutes,  
8 maybe a half an hour.

9 THE COURT: All right. Let's continue.

10 MR. MANN: I'll try and finish up before break.

11 Q. (By Mr. Mann) Does the word "glimmer" have any meaning to  
12 you?

13 A. Yes.

14 Q. Can you tell me what glimmer means in the context of  
15 *Destiny 2*?

16 A. In the context of *Destiny 2*, glimmer is the fictional  
17 currency that is like money; it's like dollars.

18 Q. And if I'm playing *Destiny 2*, I can find glitter [sic]  
19 laying on the ground and I can pick it up, correct?

20 A. You said "glitter," but it's "glimmer," but, yes, you can  
21 run around and find glimmer on the ground.

22 Q. Now, glimmer is something that appears on the screen while  
23 someone is playing the *Destiny 2* game, correct?

24 A. Yes. You would see it when you're running around the  
25 world, yes.

1 that?

2 A. Yes.

3 Q. Okay. I'd like you to look at page 183 of your deposition,  
4 and focus your attention on line 4. Do you see that?

5 MR. RAVA: Your Honor, this is published.

6 THE COURT: Read the question and the answer that you  
7 want to give to the jury.

8 MR. MANN: Certainly.

9 Q. (By Mr. Mann) I asked you the direct question --

10 THE COURT: Just ask the questions exactly as it is in  
11 the deposition.

12 Q. (By Mr. Mann) Okay.

13 "QUESTION: Okay. Do you know how the aimbot feature on  
14 AimJunkies' *Destiny 2* cheat software works?

15 "ANSWER: I have not looked at the source code."

16 Did I read that correctly?

17 A. Yes.

18 Q. And the reason you did not answer my question or you  
19 answered -- you said you have not looked at the source code,  
20 correct?

21 THE COURT: Well, that's the answer he gave, counsel.

22 MR. MANN: Okay. Fine. Thank you, Judge. We see it  
23 here.

24 Q. (By Mr. Mann) And this was under oath, was it not,  
25 Dr. Kaiser?

1 A. It was under oath.

2 MR. MANN: If I may have just a moment here.

3 Now, Ms. Nassar, punch up Docket 158. This is a  
4 declaration.

5 THE COURT: Is it Exhibit 158?

6 MR. MANN: No, it is not an exhibit. This is an  
7 impeachment document. I don't think this is part of the  
8 exhibits. This is one we have reserved for impeachment.

9 THE COURT: Ladies and gentlemen, when we refer to a  
10 docket number, that means it was filed previously in the case.  
11 Every time something is filed, it gets a docket number.

12 So tell us what is Docket No. 158, please.

13 MR. MANN: Certainly.

14 This is a declaration of Edward Kaiser in support of  
15 plaintiff's motion for summary judgment. This was filed July  
16 20th of 2023, and it was signed under oath by Dr. Kaiser.

17 THE COURT: All right.

18 MR. MANN: And, here, we're looking at the first  
19 page --

20 MR. RAVA: Hold on. I'm sorry. Do you have a copy?  
21 Thank you.

22 Q. (By Mr. Mann) Do you recognize that?

23 A. It appears familiar, yes.

24 Q. Now, if we can go to paragraph 28 of this. I think it will  
25 be --

1 MR. MANN: Can we publish this, Your Honor?

2 THE COURT: It looks like it is published. Go ahead.

3 THE CLERK: No, it's not.

4 THE COURT: You can publish it to the jury.

5 MR. MANN: Thank you.

6 Q. (By Mr. Mann) Now, if we go to the last page, I'm looking  
7 for paragraph 28.

8 Okay. I'm going to read what this says.

9 "Bungie used the cheat software once to conclude that the  
10 various features of the cheat software were functional. After  
11 its first use, the cheat software stopped working, and Bungie  
12 was unable to relaunch it. Bungie has never had a copy of the  
13 cheat software on a machine capable of analyzing it.

14 "I declare under penalty of perjury under the laws of the  
15 United States that the foregoing is true and correct, executed  
16 this 20th day of July 2023," signature "Edward Kaiser."

17 Did I read that correctly?

18 A. It sounds like you read it correctly.

19 Q. And you've stated under oath that Bungie has never had a  
20 copy of the cheat software on a machine capable of analyzing it,  
21 correct?

22 A. That's correct.

23 MR. MANN: If I can have just one more moment, Your  
24 Honor.

25 Okay. Thank you, Your Honor. I have no further questions.



1 Q. And, Dr. Kaiser, have you testified under oath in  
2 connection with this dispute before?

3 A. Yes. I've testified three separate days.

4 MR. MANN: Your Honor, in an abundance of caution,  
5 this may get into the subject of the motion in limine.

6 THE COURT: The court is familiar with the motions.

7 MR. MANN: Thank you.

8 THE COURT: Go ahead and ask another question.

9 Q. (By Mr. Rava) Dr. Kaiser, did you submit the 25 million  
10 lines of code in connection with the copyright applications?

11 A. I did not submit the 25 million lines of code, but I was  
12 involved in the production of the thousand lines of code that  
13 were produced. My role was primarily to review and make sure  
14 that nothing particularly sensitive was included in that  
15 production.

16 Q. Because that production -- why is that important not to  
17 include particularly sensitive information?

18 A. We did not want to give a real solid jumping point for  
19 reverse engineering to find the object code that we produced by  
20 that.

21 Q. Okay. And does the copyright registration, to your  
22 understanding, cover more than simply those thousand lines of  
23 code?

24 A. Yes. My understanding is it covers the whole source code,  
25 all 25 million lines.

1 Q. And the object code as well?

2 A. Yes, and the resulting object code.

3 MR. RAVA: Thank you.

4 THE COURT: Mr. Mann, anything further of the witness?

5 MR. MANN: Yes, Your Honor. I'll keep it very brief.

6 RECROSS-EXAMINATION

7 BY MR. MANN:

8 Q. Dr. Kaiser, with reference to the 25 million lines of code  
9 that were not submitted with the copyright registration -- I  
10 believe I already asked you this -- but that does not change  
11 your answer that that code is not available to the public,  
12 correct?

13 A. That's correct, it is not publicly available.

14 MR. MANN: No further questions, Your Honor.

15 THE COURT: All right. Thank you. Thank you, Doctor.  
16 You stay step down. You're excused. Have a nice day.

17 Why don't we take a recess now so not to interrupt our next  
18 witness.

19 Who is our next witness going to be?

20 MR. RAVA: Mr. Steven Guris.

21 THE COURT: All right. Not remote?

22 MR. RAVA: No, he'll be live and in person.

23 THE COURT: All right. Ladies and gentlemen, we'll  
24 take approximately 15 minutes. Please rise for the jury.

25 (Court in recess 2:22 p.m. to 2:39 p.m.)

1 Q. Okay. Now, the fact of the matter is, you never saw -- and  
2 just so we can avoid misunderstandings or so we can communicate  
3 a little better, when I refer to the "cheat software," can we  
4 have an understanding of what I'm referring to is the *Destiny 2*  
5 cheat software that was distributed by the defendant in this  
6 case, Phoenix Digital?

7 A. You're specifically referring to the game-specific file?

8 Q. What I'm saying is, there is one cheat that is being  
9 accused of infringement in this lawsuit. It was a cheat that  
10 was distributed by Phoenix Digital during a certain period of  
11 time. There may be other cheats distributed by other people  
12 that relate to *Destiny 2*, I don't know, and --

13 MR. DINI: Objection, Your Honor. Counsel is  
14 testifying --

15 MR. MANN: No, I'm just trying -- I'm trying to avoid  
16 the issue before, where every time I say "cheat software," you  
17 say, "What chief software?" I wanted to make sure we have a  
18 common language here.

19 Q. (By Mr. Mann) So when I say "cheat software," you  
20 understand I'm referring to the cheat software that is at issue  
21 in this case; can we have that understanding?

22 A. I believe so, sir.

23 Q. Thank you. Thank you.

24 Okay. Now, the question I have for you is, it's a fact  
25 that you've never actually seen the cheat software itself,

1 correct?

2 A. Physically in my hands? No, sir, that is correct, I've  
3 never seen the cheat software.

4 Q. And you've never actually operated the cheat software, have  
5 you?

6 A. No, sir.

7 Q. Okay. You never saw the source code for the cheat  
8 software, have you?

9 A. No, sir.

10 Q. Okay. You've never seen the object code for the cheat  
11 software, correct?

12 A. That's correct.

13 Q. Okay. So if I ask you to point to the substantial  
14 similarities between the source code for the cheat software and  
15 the *Destiny 2* game, you would be unable to do that?

16 A. Having never seen the source code for either, no, sir.

17 Q. Okay. Thank you.

18 And same question: You haven't seen the object code,  
19 either, correct?

20 A. No, sir.

21 Q. So, again, you can't testify that there's substantial  
22 similarities between the object code of the cheat software and  
23 the *Destiny 2* game, correct?

24 A. I don't believe I've been asked to, sir. Correct.

25 Q. True.

1 MR. MANN: Ms. Nassar, if we can go to the report,  
2 page 18, and I'm looking for paragraph 94.

3 Q. (By Mr. Mann) It says here you examined other cheats for  
4 *Destiny 2*. "Other cheats," you're referring to cheats other  
5 than the one that's here in this courtroom, at issue, correct?

6 A. I'm sorry, Mr. Mann. Can you repeat the question?

7 Q. Certainly.

8 I'm looking at what you state here in paragraph 94 of your  
9 expert report. It says, "While I have examined other cheats for  
10 *Destiny 2*," and does that mean that you've looked at cheats for  
11 *Destiny 2*, other than the one that's at issue in this lawsuit?

12 A. Yes, sir.

13 Q. Okay. But you haven't looked at this one?

14 A. No, sir; that's correct.

15 Q. Okay. So it says, "It does not, at present, appear to be  
16 possible to directly examine the specific *Destiny 2* cheat  
17 produced and sold by AimJunkies," and that's because you  
18 couldn't get your hands on it, correct?

19 A. That's correct, sir.

20 Q. Okay. So then, in fact, what you did review is the  
21 currently available loader. And I'm going to direct your  
22 attention to report page -- well, we're on, actually, paragraph  
23 95. I'm getting a little punchy in the late afternoon.

24 It says what you have done is a static and dynamic analysis  
25 of the currently available cheat loader, correct?

1 A. Yes, sir.

2 Q. And the currently available cheat loader was the one that  
3 was available and the one you downloaded in September of 2022?

4 A. Yes, sir.

5 Q. Okay. And just to belabor the point, you have not examined  
6 a loader that was available to the public between December 2019  
7 and February 2021, correct?

8 A. Correct.

9 Q. Now, in your report -- let me rephrase.

10 Were you asked to opine as to whether the cheat software  
11 that was at issue in this case infringes any Bungie copyright?

12 A. I don't believe so, sir.

13 Q. So the fact is, you were not asked to render an opinion as  
14 to copyright infringement in this case, the substantive merits  
15 of copyright infringement, correct?

16 A. I don't believe so, sir.

17 MR. MANN: Okay. Now, again, Your Honor, this goes to  
18 the objection I raised earlier, that this report, by Mr. Guris's  
19 own admission, does not purport to opine as to whether the  
20 actual *Destiny 2* software that is at issue in this case  
21 infringes any copyright.

22 That's the basis for my earlier objection and my request  
23 and motion that the testimony be stricken.

24 MR. DINI: Your Honor, just because Mr. Guris wasn't  
25 asked to render a legal conclusion about whether copyright

1 MR. MANN: No objection, Your Honor. We'll put them  
2 up one at a time, and the witness can look at them all he'd  
3 like.

4 Q. (By Mr. Mann) Okay. Now, if we look at 94, do you see  
5 where it says "copy"?

6 A. Yes, sir.

7 Q. Okay. This does not express an opinion as to whether  
8 Phoenix Digital or the AimJunkies' *Destiny 2* cheat software  
9 copied anything. You're just referring -- you have not seen a  
10 copy of the cheat, correct?

11 A. Correct.

12 THE COURT: He's already told us he doesn't have an  
13 opinion on that subject, so I don't know why you would ask that  
14 question.

15 MR. MANN: Well, it goes to my relevance question of  
16 what this has to do with the issue actually before this court.

17 THE COURT: You've made your point. I'm just telling  
18 you I'm not going to strike the testimony, but it goes to the  
19 weight as to whether and to what extent it's relevant.

20 MR. MANN: Okay.

21 Q. (By Mr. Mann) One final question on that subject: Your  
22 report does not express any opinion whatsoever as to whether the  
23 *Destiny 2* cheat software sold by Phoenix Digital infringes any  
24 Bungie copyright, right?

25 MR. DINI: Objection; asked and answered.

1 THE COURT: Just a moment.

2 Overruled, you can answer the question.

3 THE WITNESS: Could you repeat the question?

4 (The court read back.)

5 A. My report does not draw any legal conclusions.

6 Q. (By Mr. Mann) Now, your report does state that the  
7 AimJunkies' loader is not overtly destructive, and I'm referring  
8 to page 29 of your report at paragraph 140.

9 MR. MANN: Can you put that up?

10 MR. DINI: Your Honor, at this time, I would object to  
11 the relevance of this line of questioning. If Mr. Mann wants to  
12 ask questions about Mr. Guris's opinions, he's here and can  
13 testify on the stand. We don't need to walk through his report.

14 MR. MANN: Want me to address, Your Honor?

15 THE COURT: Just a moment.

16 MR. MANN: Thank you.

17 THE COURT: I'll overrule the objection.

18 Q. (By Mr. Mann) Now, you were testifying earlier, before,  
19 about all the bad things that happen when people use the cheat  
20 software, but right here in paragraph 140 of your expert report,  
21 you state, "therefore, the AimJunkies' loader is not overtly  
22 destructive." Did I read that correctly?

23 A. You did read that correctly, sir. I'm just having trouble  
24 remembering what I said earlier, because I don't believe I  
25 talked about the user's computer.



1 process.

2 Q. Any other processes?

3 A. The loader that I reviewed only used Internet Explorer.

4 Q. Do you have an opinion about whether the loader injects  
5 into video game processes?

6 A. Yes. Considering that the installation instructions  
7 describe injection as the ultimate goal, and considering the  
8 behavior of the other very similar cheats that I've looked at,  
9 injection into the *Destiny 2* process is the only way it could  
10 have achieved that functionality.

11 MR. DINI: Thank you, Mr. Guris.

12 No further questions at this time, Your Honor.

13 MR. MANN: Brief recross, Your Honor.

14 RECROSS-EXAMINATION

15 BY MR. MANN:

16 Q. Among these many opinions that Mr. Dini referred to, none  
17 of those opinions is as to whether *Destiny 2* cheat software that  
18 is at issue here infringes a Bungie copyright, right?

19 MR. DINI: Objection, Your Honor; asked and answered.

20 THE COURT: Overruled. You may answer.

21 A. Yes, sir.

22 MR. MANN: Now, Ms. Nassar, if we can put up the  
23 expert report again.

24 THE COURT: Let me ask the lawyers, is the report  
25 itself a marked exhibit not agreed to?

1 A. Correct.

2 Q. You are aware of the *Destiny 2* cheat at issue in this case?

3 A. Yes.

4 Q. You've used the cheat before?

5 A. I've used it once or twice but did not create it.

6 Q. And you have reversed engineered *Destiny 2*?

7 A. I attempted to. I didn't get anywhere.

8 Q. Well, you attached reverse-engineering tools to it, didn't  
9 you?

10 A. Yes.

11 Q. Multiple occasions?

12 A. Yes.

13 Q. For months?

14 A. Yes.

15 Q. And when you were reverse engineering *Destiny 2*, you were  
16 working to develop a cheat.

17 A. For my own personal reasons, but I didn't get anywhere,  
18 like I said.

19 Q. Right. And, Mr. May, my question was just: When you were  
20 reverse engineering *Destiny 2*, you were working to develop a  
21 cheat?

22 A. I was attempting to, yes.

23 Q. Let's go back.

24 From 2024 through present, you've worked for Phoenix  
25 Digital?